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IN THE CIRCUIT COURT OF WOOD COUNTY, WEST VIRGINIA

IN RE: THE MARRIAGE OF:

JASON L. GALLOWAY,
Petitioner,

v.

TIFFANY D. GALLOWAY,
Respondent,

EXHIBIT 6

Civil Action No.: 03-D-142

ORDER

On the 18th day of November, 2007, came the Petitioner, **Jason L. Galloway**, by counsel, Michele Rusen, who filed a Petition for Appeal from a Family Court Final Order. The Respondent, **Tiffany D. Galloway**, by counsel, Catherine B. Adams, filed a response.

Whereupon, the Court acknowledged receipt and reviewed the Petition for Appeal, the Response thereto, the Record of the Family Court, and the applicable case law and statutory law.

The Court is of the opinion that it is bound by the record in the trial of the case and accordingly bases its decision as to the Petition for Appeal upon that record. W.Va. Code § 51-2A-14.

The Court, pursuant to W.Va. Code 51-2A-14, must consider whether the findings of fact by the Family Court were clearly erroneous or whether the Family Court abused its discretion standard in its application of the law.

The Petition for Appeal raises one principle issue on appeal, "Did the Wood County Family Court properly Order Jason Galloway to pay support to Tiffany Galloway for a child not his own?"

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CAROLE JONES
CLERK CIRCUIT COURT

The Court would first note that the Supreme Court of Appeals has "[o]n numerous previous occasions, . . . voiced its opinion that the best interests of the child is the polar star by which decisions must be made which affect children." *Michael K.T. v. Tina L.T.*, 182 W.Va. 399 (1989). Additionally, "the law favors the innocent child over the putative father in certain circumstances." *Id.*

"In West Virginia, the presumption of legitimacy that arises when a child is born or conceived during a marriage is rebuttable." *Id.* at Syl. Pt. 1.

"[The] trial judge should refuse to permit blood test evidence which would disprove paternity when the individual attempting to disestablish paternity has held himself out to be the father of the child for a sufficient period of time such that disproof of paternity would result in undeniable harm to the child." *Id.* at Syl. Pt. 3.

Based upon the above, the Supreme Court of Appeals has provided the following factors to be considered in determining whether evidence of a blood test disproving paternity should be admitted:

> (1) the length of time following when the putative father first was placed on notice that he might be the biological father before he acted to contest paternity;
> (2) the length of time during which the individual desiring to challenge paternity assumed the role of father to the child;
> (3) the facts surrounding the putative father's discovery of nonpaternity;
> (4) the nature of the father/child relationship;
> (5) the age of the child;
> (6) the harm which may result to the child if paternity were successfully disproved;
> (7) the extent to which the passage of time reduced the chances of establishing paternity and a child support obligation in favor of the child; and
> (8) all other factors which may affect the equities involved in the potential disruption of the parent/child relationship or the chances of undeniable harm to the child.

Id. at 405.

"A guardian *ad litem* should be appointed to represent the interests of the minor child whenever an action is initiated to disprove the child's paternity." *Id.* at Syl. Pt. 4.

The parties were married August 24, 1998, the Petitioner was twenty-three (23) years old at the time of the marriage and the Respondent was sixteen (16). Approximately two months after the marriage, on October 28, 1998, the minor child, Ivy Lynn Galloway, was born of the marriage. Therefore, as the child was born during the marriage, the presumption of legitimacy arises. Additionally, the Petitioner's name is on the child's birth certificate.

There is evidence in the record that the parties and the child were tested at DNA Diagnostics Center to determine whether or not the Petitioner was the biological father of the child. The report from DNA Diagnostics Center excludes the Petitioner as the biological father of the child and is dated April 29, 1999, or approximately six months after the birth of the child. This testing was done as a result of the Respondent's apparent revelation to the Petitioner that the child "might not" be his. There was testimony that the child was about three months old at the time of this revelation.

The parties separated on July 10, 2000 and the Respondent filed for divorce on or about that same date (this previous divorce was dismissed because neither party was present for the final hearing). It should be noted that the Respondent had just recently turned eighteen years old at the time of the filing of the previous divorce petition. The Petitioner did not at any time prior to the filing of the previous divorce dispute in any legal manner that he was the father of the child. In fact, the Petitioner continued to live and be married to the Respondent, and act as the child's father, for around twenty months after the child was born, and over one year after knowing that he was excluded as the biological father of the child.

The Family Court Judge in the Final Order on Remand entered October 18, 2007 from the hearing held on January 30, 2007, found that the Guardian *ad litem* had found upon investigation of the facts and circumstances involved in the case and based upon application and analysis of the factors provided by the *Michael K.T.* case, that it was not in the best interests of child for the disestablishment of paternity to occur in this case. As was previously noted, "the best interests of the child is the polar star by which decisions must be made which affect children." *Id.*

The Court finds that there is sufficient evidence in the record to indicate that the factors provided by *Michael K.T.* weigh in favor of the evidence of a blood test disproving paternity to not be admitted to rebut the presumption that Petitioner is the legal father of the child.

As to the first factor, the record indicates that the Petitioner was made aware, at the latest, that he was not the biological father of the child on April 29, 1999. At this time the child was already six months old. After the Petitioner received this knowledge he continued to live and be married to the Respondent, and act and hold himself out as the father of the child, for a period around twenty months. It is not entirely clear in the record whether or not the Petitioner expressly contested paternity in the previous divorce proceeding, but assuming that he did, a relatively lengthy period of time had passed. This period of time also goes to the analysis of the second factor under *Michael K.T.*

As to the third factor, the age discrepancy between the parties (around eight years) and the fact that the Respondent was underage throughout most of the relationship and for some part of the marriage is relevant to the Petitioner's discovery that he may not have been the biological father. The Respondent was only fifteen years old when she became pregnant and was only sixteen at the time of marriage and of giving birth to the

child. The Petitioner, on the other hand, was twenty-two or twenty-three years old at the time that this occurred. The age of the parties could clearly have been a contributing factor in the short period of time that passed before the Petitioner was informed by the Respondent that he "might not" be the father of the child.

The fourth factor deals with the nature of the father/child relationship. In this case there was evidence that the Petitioner continued to hold himself out as the father of the child and the child had always considered him her father until at least the age of four. The Petitioner did so because of an admitted love he had towards the Respondent and it is important to note that this situation and the married relationship continued for a period of time in excess of one year after which the Petitioner knew, from the results of a blood test, that he was excluded as the father. The Petitioner admitted at the hearing held on January 30, 2007 that the child was still calling him "daddy" until she was the age of four when he told the child to no longer call him by that name. Additionally, the child has had an ongoing relationship with the Petitioner's mother throughout most of the pendency of this matter. The child recognizes the Petitioner's mother as her grandmother and currently misses visiting with her "grandmother."

The age of the child (the fifth factor) is currently approximately eight years of age. For purposes of analysis of the *Michael K.T.* factors, the relevant age is probably approximately four years of age. The reason for using this age is that the child was still calling the Petitioner her father until the age of four and it is apparently about at that time that the Petitioner last had meaningful contact with the child. Essentially, the child and the Petitioner had some kind of a father/child relationship at least up until the child was approximately four years of age. In the approximately four years since, the Petitioner was provided an opportunity by Order of the Family Court to have phased in visitation

with the child. The Petitioner could have exercised his ability to visit with the child during the last four years. The Court, however, does recognize that the Petitioner may have been prejudiced in his attempt to have paternity disestablished if he had followed through with visitation with the child.

There would be significant harm that would result to the child if paternity were disproved. First, the child would be left without a legal father even after having spent almost half of her life believing that the Petitioner was her father. Second, the child would be left without any type of support. This support would, as the Petitioner has clearly pointed out to the Court, undoubtedly include financial support. The child would be significantly harmed by the fact that she would never have any reliable or meaningful financial support from any legal father, natural or otherwise, if the paternity were disproved. To be considered is the fact that the child's mother (the Respondent) is currently receiving SSI and has been adjudicated disabled with little income, while it has been indicated in the record that the Petitioner does have a means of steady employment. Also, it is important to note that there was a significant passage of time, at least four years, during which the chances of establishing paternity and a support obligation in a natural father in favor of the child have been diminished and reduced. Further, at this point in time the child is eight years old and the chances of establishing paternity are becoming increasingly reduced.

Finally, the Court is of the opinion that the child would suffer undeniable harm if the paternity of the Petitioner were disestablished. At this point, the child will never be able to form any meaningful bond with another father and it is unlikely that the paternity if another will ever be established. The child will suffer great harm if she has no legal father and is not provided any support, financial or otherwise, from such legal father.

After consideration of the Petition for Appeal, the Response thereto, the Record of the Family Court, and applicable case and statutory law, the Court finds that there is sufficient evidence in the record to support the findings that the Family Court Judge made with regard to the best interests of the child and the admissibility of the blood test evidence to disprove paternity. While the Court has sympathy for the Petitioner in this case, the Court finds that the Family Court did not abuse its discretion in the application of the law and its findings of fact are not clearly erroneous. It appears to the Court that the Family Court Judge properly applied the law and made appropriate findings given the evidence presented in her Order that the paternity of the Petitioner not be disestablished and that he shall continue to be the legal father of the minor child, as it would not be in the best interests of the child to have paternity disestablished.

Therefore, the decision and Final Order on Remand of the Family Court is affirmed and the appeal denied.

Accordingly, the Court **ORDERS**:

1. The Petition for Appeal is **DENIED**;
2. This is a Final Order disposing of the Appeal; and
3. The Clerk of this Court is directed to forward a copy of this Order to the parties.

Entered this 14th day of February, 2008.

The Honorable J.D. Beane, Judge

STATE OF WEST VIRGINIA
COUNTY OF WOOD, TO-WIT:

I, CAROLE JONES, Clerk of the Circuit Court of Wood County, West Virginia, hereby certify that the foregoing is a true and complete copy of an order entered in said Court, on the 14 day of February, 2008, as fully as the same appears in my office of record.

Given under my hand and seal of said Circuit Court, this the 19 day of February, 2008.

Carole Jones
Clerk of the Circuit Court of
Wood County, West Virginia

By: J Woods, Deputy